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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF DELAWARE  
4 C.A. No. 02-1294-JJF

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4 MBIA INSURANCE CORPORATION AND  
5 WELLS FARGO BANK, N.A. (f/k/a  
6 WELLS FARGO BANK MINNESOTA N.A.)  
7 AS TRUSTEE OF SFC GRANTOR TRUST  
8 SERIES 2000-1, SFC GRANTOR TRUST,  
9 SERIES 2000-2, SFC GRANTOR TRUST,  
10 SERIES 2000-3, SFC GRANTOR TRUST,  
11 SERIES 2000-4, SFC GRANTOR TRUST,  
12 SERIES 2001-1, SFC GRANTOR TRUST,  
13 SERIES 2001-2, SFC OWNER TRUST,  
14 SERIES 2000-I, AND SFC GRANTOR  
15 TRUST, SERIES 2001-3,  
16 Plaintiffs/  
17 Counterclaim Defendants,

- vs -

12 ROYAL INDEMNITY COMPANY,  
13 Defendant/  
14 Counterclaim Plaintiff.

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14 ROYAL INDEMNITY COMPANY,  
15 Third-Party Plaintiff,  
16 - vs -

17 ANDREW N. YAO, STUDENT LOAN SERVICING  
18 LLC, STUDENT LOAN ACCEPTANCE II LLC,  
19 STUDENT LOAN ACCEPTANCE III LLC, STUDENT  
20 LOAN ACCEPTANCE V LLC, STUDENT LOAN  
21 ACCEPTANCE VIII LLC, STUDENT LOAN  
22 ACCEPTANCE IX LLC, SFC FINANCIAL LLC I,  
23 SFC FINANCIAL LLC II, SFC FINANCIAL LLC  
24 VI, SFC FINANCIAL LLC VII,  
25 Third Party Defendants.

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22 August 24, 2007  
23 9:39 a.m.

24 TRACK I WITNESS: MARTIN LIEBERMAN  
25

<p>1 2 3 ROYAL INDEMNITY COMPANY, 4 Counter-Claimant, 5 - vs - 6 MBIA BANK and WELLS FARGO BANK MINNESOTA 7 N.A., 8 Counter-Defendants. 9 10 C.A. No. 04-1551-JJF 11 12 CHARLES A. STANZIALE, JR., CHAPTER 7 13 TRUSTEE OF STUDENT LOAN FINANCE 14 CORPORATION, 15 Plaintiff, 16 - vs - 17 PEPPER HAMILTON LLP, et al., 18 Defendants. 19 20 C.A. No. 05-72-JJF 21 22 CHARLES A. STANZIALE, JR., CHAPTER 7 23 TRUSTEE OF STUDENT LOAN FINANCE 24 CORPORATION, 25 Plaintiff, - vs - McGLADREY &amp; PULLEN LLP AND MICHAEL AQUINO, Defendants. C.A. No. 05-165-JJF ROYAL INDEMNITY COMPANY, Plaintiff, - vs - PEPPER HAMILTON LLP, et al., Defendants.</p>	<p>2 4 1 APPEARANCES: 2 3 SONNENSCHN NATH &amp; ROSENTHAL, ESQ. 4 1221 Avenue of the Americas 5 New York, New York 10020 6 Attorneys for Royal Indemnity 7 Company 8 BY: DANIEL PANCOTTI, ESQ. 9 10 McELROY, DEUTSCH, MULVANEY 11 &amp; CARPENTER, LLP 12 Three Gateway Center 13 100 Mulberry Street 14 Newark, New Jersey 07102-4079 15 Attorneys for the Bankruptcy 16 Trustee for SFC 17 BY: STEPHEN PAYERLE, ESQ. 18 19 SCHNADER HARRISON SEGAL &amp; LEWIS LLP 20 1600 Market Street 21 Philadelphia, Pennsylvania 19103-7286 22 Attorneys for Pepper Hamilton LLP 23 BY: LINDA ALLE-MURPHY, ESQ. 24 25 ECKERT SEAMANS 26 Two Liberty Place 27 50 South 16th Street 28 22nd Floor 29 Philadelphia, Pennsylvania 19102 30 Attorneys for W. Roderick Gagne, 31 Pamela Gagne, Robert Bast and the 32 Family Trusts 33 BY: NEIL G. EPSTEIN, ESQ. 34 35</p>
<p>3 1 2 3 4 August 24, 2007 5 9:39 a.m. 6 7 Deposition of MARTIN LIEBERMAN, held 8 at the offices of McElroy Deutsch Mulvaney 9 &amp; Carpenter LLP, Three Gateway Center, 10 Newark, New Jersey, before Todd DeSimone, 11 a Registered Professional Reporter and 12 Notary Public of the State of New Jersey. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>5 1 2 MARTIN LIEBERMAN, 3 called as a witness, having been first 4 duly sworn, was examined and testified 5 as follows: 6 EXAMINATION BY MR. EPSTEIN: 09:39:05AM 7 Q. Good morning, Mr. Lieberman. 09:39:27AM 8 My name is Neil Epstein. I'm from Eckert 09:39:30AM 9 Seamans, a Philadelphia law firm. I 09:39:33AM 10 represent in this action Robert Bast, 09:39:41AM 11 Pamela Gagne, certain family trusts, and 09:39:44AM 12 Rod Gagne as trustee of those trusts. 09:39:50AM 13 I'm going to be asking you 09:39:57AM 14 questions about your report. I want to 09:39:59AM 15 tell you that what I've done is put your 09:40:00AM 16 report and the underlying documents that 09:40:05AM 17 were sent to me by counsel as being those 09:40:09AM 18 documents listed in your report that you 09:40:13AM 19 relied on in a book. Unfortunately, FedEx 09:40:15AM 20 has not delivered the two boxes, but they 09:40:19AM 21 should be here relatively soon. 09:40:24AM 22 But in the meanwhile, what I 09:40:25AM 23 would like you to do, if you would, is 09:40:27AM 24 answer my questions off of just the report 09:40:32AM 25 without the exhibits. Okay? 09:40:34AM</p>

2 (Pages 2 to 5)

6

1 LIEBERMAN  
2 A. That's fine. 09:40:36AM  
3 Q. I want to ask you, I read your 09:40:44AM  
4 report and I read your background, I want 09:40:46AM  
5 to ask you whether you have had experience 09:40:48AM  
6 in advising a buyer of a business as to 09:40:51AM  
7 the value of the company that the buyer 09:40:54AM  
8 was intending or proposing to purchase. 09:40:58AM  
9 A. I have had experience 09:41:01AM  
10 consulting with buyers on purchasing 09:41:04AM  
11 businesses as to their value. 09:41:06AM  
12 Q. Has that occurred frequently, 09:41:08AM  
13 infrequently, during your career? 09:41:10AM  
14 A. I think it has occurred 09:41:13AM  
15 frequently. 09:41:15AM  
16 Q. Recently? 09:41:15AM  
17 A. Yes. 09:41:17AM  
18 Q. Within the last six months? 09:41:18AM  
19 A. Yes, within the last six 09:41:20AM  
20 months. 09:41:22AM  
21 Q. And was it a case of your going 09:41:22AM  
22 to the company or looking at the company 09:41:24AM  
23 either through books, records, or 09:41:29AM  
24 whatever, and advising your client as to 09:41:31AM  
25 whether some proposed purchase price was 09:41:35AM

7

1 LIEBERMAN  
2 reasonable or not reasonable? 09:41:37AM  
3 A. Normally when I do a consulting 09:41:41AM  
4 assignment, I will do a site visit to the 09:41:44AM  
5 company that's under investigation. I 09:41:47AM  
6 will review the books and records to the 09:41:50AM  
7 extent they are provided to me about the 09:41:52AM  
8 company, as well as get a sense towards 09:41:56AM  
9 what the future of the company is, what 09:41:59AM  
10 direction is the company going, what are 09:42:01AM  
11 the strengths, weaknesses, opportunities 09:42:05AM  
12 and threats facing the company, as well as 09:42:07AM  
13 some sort of projection as to future cash 09:42:11AM  
14 flows related to the company, as stated by 09:42:15AM  
15 management. 09:42:19AM  
16 Q. Have you ever had a situation 09:42:19AM  
17 where the person that you were 09:42:21AM  
18 representing or your client in purchasing 09:42:25AM  
19 a business did not want to see the past 09:42:27AM  
20 financial statements of the business? 09:42:29AM  
21 A. I don't think I've seen an 09:42:36AM  
22 instance where someone would buy a company 09:42:38AM  
23 where they would not want to see the past 09:42:40AM  
24 financial statements, no. 09:42:42AM  
25 Q. It would be critical, at least 09:42:45AM

8

1 LIEBERMAN  
2 a starting point for any analysis of what 09:42:46AM  
3 the proper purchase price would be, 09:42:49AM  
4 correct? 09:42:52AM  
5 MR. PAYERLE: Objection to 09:42:52AM  
6 form. 09:42:53AM  
7 A. The past financial statements 09:42:55AM  
8 form a basis for commencement of the 09:42:57AM  
9 investigation of any company. 09:42:59AM  
10 Q. You were retained to give an 09:43:11AM  
11 opinion with respect to the fair market 09:43:16AM  
12 value of Premier Education Group, Inc. as 09:43:20AM  
13 of March 31, 2002 and some date that I 09:43:26AM  
14 can't recall in 2006; is that correct? 09:43:33AM  
15 A. I was engaged to prepare a 09:43:35AM  
16 valuation as of March 31st, 2002 and 09:43:38AM  
17 December 31st, 2006. 09:43:40AM  
18 Q. And you did that? 09:43:45AM  
19 A. I did that. 09:43:47AM  
20 Q. And your analysis is in your 09:43:47AM  
21 report, correct? 09:43:51AM  
22 A. My analysis is in my report and 09:43:52AM  
23 in the work papers that I maintain in my 09:43:55AM  
24 files associated with preparation of this 09:43:59AM  
25 report. 09:44:03AM

9

1 LIEBERMAN  
2 Q. Have you looked at your work 09:44:03AM  
3 file in preparation for this deposition? 09:44:06AM  
4 A. I looked at my work file, yes. 09:44:09AM  
5 Q. Do you have a copy of your work 09:44:14AM  
6 file with you? 09:44:15AM  
7 A. My work file is in computer 09:44:19AM  
8 form. It is files within a computer 09:44:21AM  
9 setting. I didn't take the files with me. 09:44:25AM  
10 Q. Let me ask you, what's in the 09:44:29AM  
11 computer other than the report -- are 09:44:33AM  
12 there drafts of the report in your 09:44:37AM  
13 computer? 09:44:40AM  
14 A. I don't believe so. 09:44:41AM  
15 Q. So in preparing the report, you 09:44:44AM  
16 would do a draft and then you would work 09:44:46AM  
17 over the draft on the same document; is 09:44:48AM  
18 that your procedure? 09:44:51AM  
19 A. Normally we do actually save 09:44:55AM  
20 the drafts. I just can't recall in this 09:44:58AM  
21 case if I have the drafts in that same 09:45:01AM  
22 computer file or someplace else. But 09:45:03AM  
23 chances are there are drafts laying around 09:45:05AM  
24 and I could produce those drafts. 09:45:11AM  
25 MR. EPSTEIN: I would request 09:45:14AM

3 (Pages 6 to 9)

10

1 LIEBERMAN  
2 the production of those drafts, if you 09:45:15AM  
3 would. 09:45:18AM  
4 Q. What else would be in the work 09:45:24AM  
5 file, if they are in the work file, I'm 09:45:26AM  
6 not suggesting they are on the computer, 09:45:28AM  
7 but I'm including the drafts within a work 09:45:30AM  
8 file, but the work file on the computer, 09:45:31AM  
9 what else would be in there other than 09:45:33AM  
10 drafts, perhaps the final report, the 09:45:36AM  
11 documents that were sent to me which are 09:45:42AM  
12 the ones listed in your report; would 09:45:44AM  
13 there be anything else? 09:45:47AM  
14 A. Well, the work file would have 09:45:52AM  
15 documents and worksheets that led up to 09:45:58AM  
16 the final worksheet in our report. 09:46:02AM  
17 In other words, our report, for 09:46:05AM  
18 example, the Schedule 7 in my report on 09:46:07AM  
19 Appendix D has certain calculations 09:46:15AM  
20 underlying the results that are shown on 09:46:17AM  
21 Schedule 7. Those documents would be in 09:46:19AM  
22 the work file. 09:46:22AM  
23 Q. Anything else you can think of? 09:46:27AM  
24 A. All of the documents that were 09:46:29AM  
25 provided to me by this office here. 09:46:30AM

11

1 LIEBERMAN  
2 Q. Those are the documents listed 09:46:37AM  
3 in your report, correct? 09:46:38AM  
4 A. That's correct. Well, there 09:46:40AM  
5 are other documents that were provided to 09:46:41AM  
6 me that I didn't necessarily use for my 09:46:42AM  
7 report. 09:46:46AM  
8 Q. What are those documents? 09:46:46AM  
9 A. I don't know. 09:46:48AM  
10 Q. You don't know? 09:46:48AM  
11 A. No. 09:46:49AM  
12 Q. Did counsel provide you with 09:46:50AM  
13 the financial statements of Premier prior 09:47:00AM  
14 to 2001? 09:47:02AM  
15 A. I don't know. 09:47:53AM  
16 Q. When you say you don't know, on 09:47:54AM  
17 the list of documents that you say you 09:47:56AM  
18 reviewed, going to Appendix C, I think, 09:48:01AM  
19 "Sources of Information," you have audited 09:48:08AM  
20 financial statements of Premier for the 09:48:12AM  
21 years 2001 to 2005; is that correct? 09:48:15AM  
22 A. Yes, that is correct. 09:48:23AM  
23 Q. Can I assume that if you had 09:48:27AM  
24 been given the previous financial 09:48:30AM  
25 statements prior to 2001, you would have 09:48:33AM

12

1 LIEBERMAN  
2 listed them here? 09:48:34AM  
3 A. Only if I used them in my 09:48:38AM  
4 report. 09:48:42AM  
5 Q. What about if you used them to 09:48:42AM  
6 review to get some idea as to how the 09:48:45AM  
7 company had done prior to 2001, would you 09:48:47AM  
8 have put them down in this list? 09:48:52AM  
9 A. Had I used the reports prior to 09:48:55AM  
10 2001, I would have put it on the list. 09:48:58AM  
11 Q. By "used," if you would have 09:49:00AM  
12 reviewed them to form some idea as to how 09:49:02AM  
13 the company had performed prior to 2001; 09:49:07AM  
14 is that what you mean? 09:49:10AM  
15 A. If I had used the financial 09:49:12AM  
16 statements, I would have listed them in my 09:49:14AM  
17 report. 09:49:17AM  
18 Q. Did you think it was unusual, 09:49:17AM  
19 Mr. Lieberman, that you were asked to do 09:49:20AM  
20 an appraisal of a company as of March 2002 09:49:22AM  
21 and you were not given financial 09:49:28AM  
22 statements other than the 2001 financial 09:49:31AM  
23 statement? 09:49:35AM  
24 MR. PAYERLE: Objection, form. 09:49:35AM  
25 Q. I mean prior to the 2002 09:49:36AM

13

1 LIEBERMAN  
2 period. 09:49:39AM  
3 A. I don't know what you mean by 09:49:42AM  
4 "unusual." 09:49:44AM  
5 Q. Did you find it unusual? I 09:49:44AM  
6 mean, that word I think has a definition 09:49:48AM  
7 that we all could agree to. Out of the 09:49:52AM  
8 ordinary. 09:49:55AM  
9 MR. PAYERLE: Same objection. 09:49:56AM  
10 Go ahead. 09:49:57AM  
11 A. I was presented with the 09:49:57AM  
12 information I was presented with and 09:50:01AM  
13 that's what I used in my report. 09:50:03AM  
14 Q. Who presented it to you? 09:50:04AM  
15 A. This office, Lois Goodman. 09:50:06AM  
16 Q. Have you had any contact with 09:50:11AM  
17 any lawyers in this office other than Lois 09:50:13AM  
18 Goodman? 09:50:18AM  
19 A. Yes, Michael Waters and Steve 09:50:18AM  
20 Payerle. 09:50:31AM  
21 Q. So you did have some 09:50:41AM  
22 communications with Lois Goodman and also 09:50:43AM  
23 Mr. Waters, correct, and Mr. Payerle? 09:50:45AM  
24 A. I received information from 09:50:49AM  
25 Lois Goodman and Mr. Waters. I did not 09:50:52AM

4 (Pages 10 to 13)

1 LIEBERMAN  
2 contracts work? 10:33:57AM  
3 MR. PAYERLE: Same objection. 10:33:59AM  
4 A. I don't follow you. 10:33:59AM  
5 Q. Let me make it very clear. A 10:34:04AM  
6 student comes in and signs a contract for 10:34:07AM  
7 \$5,000. You report 80 percent of that as 10:34:12AM  
8 being revenues. Is that correct? 10:34:17AM  
9 A. I don't know, but all right. 10:34:20AM  
10 Q. You didn't read the '96 through 10:34:25AM  
11 2000 financials, did you? 10:34:28AM  
12 A. Yes, I did. 10:34:30AM  
13 Q. Oh, you did read them? 10:34:31AM  
14 A. Yes, I did. 10:34:32AM  
15 Q. So they were given to you by 10:34:34AM  
16 counsel -- 10:34:36AM  
17 A. I'm sorry, I didn't get that 10:34:37AM  
18 far back. 2001 was the beginning. I 10:34:40AM  
19 misheard you. 10:34:45AM  
20 Q. I'm talking '96 through 2000. 10:34:45AM  
21 A. I'm sorry, I misheard you. 10:34:48AM  
22 Q. Now, in the 2001 financial, are 10:34:50AM  
23 you telling me it didn't say the breakdown 10:34:54AM  
24 of what was reported as revenue from the 10:34:56AM  
25 contract that I just gave you as a 10:35:00AM

1 LIEBERMAN  
2 hypothetical? 10:35:01AM  
3 MR. PAYERLE: Objection, form. 10:35:04AM  
4 A. I would have to refer back to 10:35:05AM  
5 it. But I recall there is a paragraph 10:35:07AM  
6 which describes the revenue recognition 10:35:10AM  
7 policy. 10:35:13AM  
8 Q. And wasn't it 80/20? 10:35:13AM  
9 A. I would have to look at it. 10:35:15AM  
10 Q. Why don't you take a look at 10:35:16AM  
11 the year 2000, which is in your book under 10:35:19AM  
12 tab 1A. It is note 4. Would you read to 10:35:40AM  
13 yourself note 4. 10:36:12AM  
14 (Witness perusing document.) 10:36:32AM  
15 Q. For that year, it is stated 10:36:51AM  
16 that 80 percent is recognized as revenue 10:36:56AM  
17 at the time of the contract; is it not? 10:37:02AM  
18 A. It appears to be so. 10:37:04AM  
19 Q. Now go to the next financial 10:37:07AM  
20 statement, which is 2001, which I believe 10:37:09AM  
21 you testified you did review? 10:37:14AM  
22 A. Yes, I did. Though "review" is 10:37:17AM  
23 a poor choice of words. Because in 10:37:22AM  
24 accountant parlance, that means I gave a 10:37:25AM  
25 review opinion, which I did not. 10:37:27AM

1 LIEBERMAN  
2 Q. Well, review or read note 4, 10:37:28AM  
3 whatever you refer -- 10:37:31AM  
4 A. "Read" is the word. 10:37:32AM  
5 Q. We are not in accounting 10:37:33AM  
6 school. Read note 4, if you would. 10:37:36AM  
7 (Witness perusing document.) 10:37:41AM  
8 Q. Note 4 of the 2001 seems to be 10:38:12AM  
9 the same recognition, 80/20? 10:38:14AM  
10 A. It appears that way. 10:38:18AM  
11 Q. Do you have any question that 10:38:19AM  
12 was the policy that is stated in the 10:38:20AM  
13 financial statements as being the policy 10:38:23AM  
14 of the company with respect to revenue 10:38:25AM  
15 recognition? 10:38:28AM  
16 A. The policy appears to be that 10:38:28AM  
17 when a student enrolls, 80 percent of the 10:38:31AM  
18 tuition is taken into revenue. 10:38:36AM  
19 Q. So you knew that when you read 10:38:39AM  
20 this, correct? "This" being the 2001 10:38:42AM  
21 financial statement which is marked as 10:38:46AM  
22 Exhibit 354. 10:38:48AM  
23 A. I knew that after I read it. 10:38:50AM  
24 Q. You can keep going with your 10:39:10AM  
25 comments on Mr. Waddington, his report. 10:39:13AM

1 LIEBERMAN  
2 MR. PAYERLE: You referred to 10:39:51AM  
3 Exhibit 354? 10:39:52AM  
4 MR. EPSTEIN: Yes, that was the 10:39:54AM  
5 2000. The 2001 financial statement I 10:39:56AM  
6 asked Mr. Lieberman to look at, that is 10:39:58AM  
7 Exhibit 326, Track II. 10:40:06AM  
8 (Witness perusing document.) 10:42:26AM  
9 A. So I object to the last 10:42:27AM  
10 sentence on the last paragraph "These 10:42:29AM  
11 analyses performed by Mr. Lieberman were 10:42:32AM  
12 an integral component of his selection of 10:42:34AM  
13 a discount rate." 10:42:38AM  
14 My objection is -- I object to 10:42:40AM  
15 that statement. 10:42:44AM  
16 Q. You what? 10:42:45AM  
17 A. I object to that sentence. 10:42:45AM  
18 Q. Your objection is you object; 10:42:47AM  
19 is that what you just said? 10:42:50AM  
20 A. I think I did. 10:42:51AM  
21 My objection is I don't agree 10:42:54AM  
22 with that statement. 10:42:56AM  
23 Q. But you did use the income in 10:42:58AM  
24 determining an appropriate discount rate, 10:43:02AM  
25 didn't you? 10:43:04AM



<p style="text-align: right;">62</p> <p>1 LIEBERMAN</p> <p>2 A. Well, it depends on -- no, I 10:56:52AM</p> <p>3 would put a demand note right after cash. 10:56:55AM</p> <p>4 Q. Okay, let's move on. 10:56:58AM</p> <p>5 (Witness perusing document.) 10:57:40AM</p> <p>6 A. On page 15, in the middle of 10:57:40AM</p> <p>7 the page, "There is no apparent 10:57:44AM</p> <p>8 consideration by Mr. Lieberman of the 10:57:46AM</p> <p>9 impact these recently acquired schools had 10:57:49AM</p> <p>10 in determining what a reasonable 10:57:52AM</p> <p>11 projection of cash flow may have been in 10:57:54AM</p> <p>12 March 2002." 10:57:56AM</p> <p>13 I disagree with that statement. 10:57:58AM</p> <p>14 Q. Why? 10:58:01AM</p> <p>15 A. Because there was consideration 10:58:03AM</p> <p>16 of the impact of what the cash flow may 10:58:04AM</p> <p>17 have been in March of 2002. 10:58:13AM</p> <p>18 Q. That's not what it says, is it? 10:58:17AM</p> <p>19 It is determining what a reasonable 10:58:20AM</p> <p>20 projection of cash flow may have been. 10:58:22AM</p> <p>21 Isn't that the exact wording that 10:58:25AM</p> <p>22 Mr. Waddington used? 10:58:31AM</p> <p>23 A. Mr. Waddington says what a 10:58:33AM</p> <p>24 reasonable projection of cash flow may 10:58:35AM</p> <p>25 have been in March 2002. I'm saying I did 10:58:37AM</p>	<p style="text-align: right;">64</p> <p>1 LIEBERMAN</p> <p>2 statement. Go on. 11:00:05AM</p> <p>3 (Witness perusing document.) 11:00:26AM</p> <p>4 A. The last paragraph as well, for 11:00:26AM</p> <p>5 the very same reasons. "Mr. Lieberman's 11:00:29AM</p> <p>6 discount rate used in calculating the 11:00:32AM</p> <p>7 present value of the anticipated cash flow 11:00:35AM</p> <p>8 does not appear to consider the impact on 11:00:37AM</p> <p>9 operations or related risks which may have 11:00:40AM</p> <p>10 been considered with the acquisition of 11:00:43AM</p> <p>11 six new schools." 11:00:45AM</p> <p>12 I did take that into account in 11:00:46AM</p> <p>13 the compilation, the buildup, of my 11:00:49AM</p> <p>14 discount rate. 11:00:53AM</p> <p>15 Q. By using the actual figures 11:00:54AM</p> <p>16 that occurred over the next five years, 11:00:55AM</p> <p>17 correct? 11:00:58AM</p> <p>18 A. By using the actual figures 11:00:58AM</p> <p>19 with the view that those amounts were 11:01:02AM</p> <p>20 predicted in March 2002. 11:01:07AM</p> <p>21 Q. With the assumption that they 11:01:09AM</p> <p>22 were predicted in March of 2002, because 11:01:11AM</p> <p>23 no one made that assumption, did they? 11:01:13AM</p> <p>24 MR. PAYERLE: Objection to 11:01:16AM</p> <p>25 form. 11:01:18AM</p>
<p style="text-align: right;">63</p> <p>1 LIEBERMAN</p> <p>2 address that. 10:58:43AM</p> <p>3 Q. By looking at the actuals for 10:58:46AM</p> <p>4 that year, correct? 10:58:48AM</p> <p>5 A. Well, I looked at the actuals 10:58:52AM</p> <p>6 not only for that year, but for subsequent 10:58:54AM</p> <p>7 years as well, right through 2005, on the 10:58:57AM</p> <p>8 theory that subsequent events, if they are 10:59:04AM</p> <p>9 unanticipated, for example, the school 10:59:12AM</p> <p>10 burns down, yeah, you can't use that, look 10:59:14AM</p> <p>11 back and say "Okay, I knew that was going 10:59:17AM</p> <p>12 to happen in March 2002." 10:59:19AM</p> <p>13 But in a case where business is 10:59:21AM</p> <p>14 going on as usual and as anticipated and 10:59:25AM</p> <p>15 as management planned, then you can look 10:59:28AM</p> <p>16 back at subsequent events as a means of 10:59:33AM</p> <p>17 determining value at a prior date. 10:59:36AM</p> <p>18 Q. We are going to go into that in 10:59:38AM</p> <p>19 so much detail, you will probably be sick 10:59:41AM</p> <p>20 of me and sick of my questions. 10:59:43AM</p> <p>21 A. I don't think so. That's not 10:59:45AM</p> <p>22 possible. 10:59:47AM</p> <p>23 Q. I think it is close. We will 10:59:47AM</p> <p>24 explore that in detail later, but I 11:00:00AM</p> <p>25 understand you disagree with his 11:00:03AM</p>	<p style="text-align: right;">65</p> <p>1 LIEBERMAN</p> <p>2 A. "Assumption" isn't the right 11:01:18AM</p> <p>3 word. With the prediction as reflected in 11:01:22AM</p> <p>4 certain documents presented to me. 11:01:25AM</p> <p>5 Q. Did you go back and, by the 11:01:29AM</p> <p>6 way, look at the history of the six 11:01:31AM</p> <p>7 schools that were purchased in terms of 11:01:34AM</p> <p>8 their ability to produce either cash flow 11:01:37AM</p> <p>9 or income? 11:01:39AM</p> <p>10 A. That was not presented to me. 11:01:41AM</p> <p>11 I did not go back and look. 11:01:43AM</p> <p>12 Q. Did you ask for that 11:01:44AM</p> <p>13 information? 11:01:46AM</p> <p>14 A. I was given a set of 11:01:47AM</p> <p>15 information and told there was no more 11:01:49AM</p> <p>16 information. 11:01:53AM</p> <p>17 Q. You've got to answer my 11:01:54AM</p> <p>18 questions, not someone else's questions. 11:01:55AM</p> <p>19 Did you ask for that 11:01:57AM</p> <p>20 information? You don't know whether it 11:02:01AM</p> <p>21 exists or not, all right, so don't give an 11:02:03AM</p> <p>22 answer on something you don't know. 11:02:05AM</p> <p>23 I'm asking you, did you ask for 11:02:07AM</p> <p>24 that information? "What's the financial 11:02:10AM</p> <p>25 history of these six schools they 11:02:12AM</p>

17 (Pages 62 to 65)

78

1 LIEBERMAN  
2 do that in terms of negotiating a fair and 11:14:58AM  
3 reasonable price; is that your testimony? 11:15:01AM  
4 MR. PAYERLE: Objection to 11:15:03AM  
5 form. This has been asked and answered. 11:15:03AM  
6 MR. EPSTEIN: I wish it had 11:15:08AM  
7 been. 11:15:09AM  
8 MR. PAYERLE: We each have our 11:15:10AM  
9 position on that. Go ahead. 11:15:11AM  
10 Q. You have nothing to add to your 11:15:13AM  
11 answer? 11:15:15AM  
12 A. I have nothing to add to my 11:15:15AM  
13 answer. 11:15:16AM  
14 Q. Okay, continue on. 11:15:17AM  
15 (Witness perusing document.) 11:15:28AM  
16 A. On page 16, under "Conclusion," 11:15:28AM  
17 the first paragraph I disagree with. 11:15:31AM  
18 "In our opinion, to a 11:15:41AM  
19 reasonable degree of accounting certainty, 11:15:45AM  
20 the discounted cash flow calculations 11:15:48AM  
21 prepared by Mr. Lieberman and used in his 11:15:50AM  
22 methodology of valuing PEG are inaccurate 11:15:54AM  
23 and unreliable." I completely disagree 11:15:56AM  
24 with that. 11:16:00AM  
25 "His methodology is based upon 11:16:01AM

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1 LIEBERMAN  
2 the selective use of information, fails to 11:16:02AM  
3 consider other relevant information, and 11:16:05AM  
4 contains inaccurate adjustments to arrive 11:16:07AM  
5 at cash flow of PEG." I disagree with 11:16:09AM  
6 that statement as well. 11:16:12AM  
7 Q. So you think that the financial 11:16:14AM  
8 information for Premier for 1966 through 11:16:18AM  
9 the year 2000 are totally irrelevant to a 11:16:22AM  
10 valuation of Premier in March of '02; is 11:16:32AM  
11 that what you are saying? 11:16:36AM  
12 MR. PAYERLE: I assume you 11:16:37AM  
13 didn't mean 1966. 11:16:38AM  
14 MR. EPSTEIN: Probably not. 11:16:39AM  
15 1996. 11:16:41AM  
16 MR. PAYERLE: Objection to 11:16:42AM  
17 form. 11:16:47AM  
18 MR. EPSTEIN: Even with that 11:16:47AM  
19 correction, you object to the form, not my 11:16:48AM  
20 1966? 11:16:51AM  
21 MR. PAYERLE: I was taking the 11:16:53AM  
22 liberty to correct you on the 1966. 11:16:54AM  
23 MR. EPSTEIN: But that's not 11:16:57AM  
24 your objection? 11:16:58AM  
25 MR. PAYERLE: As I recall the 11:16:58AM

80

1 LIEBERMAN  
2 question, yes. 11:16:59AM  
3 MR. EPSTEIN: Okay, thank you. 11:17:01AM  
4 A. I've forgot the question. 11:17:01AM  
5 (The record was read.) 11:17:25AM  
6 A. I don't think Premier existed 11:17:25AM  
7 in 1966. 11:17:27AM  
8 Q. We changed that to 1996. 11:17:29AM  
9 A. But I believe that that 11:17:34AM  
10 information could have some relevance in 11:17:37AM  
11 forming an opinion of the value of Premier 11:17:39AM  
12 on March of 2002. 11:17:44AM  
13 Q. So that when Mr. Waddington 11:17:46AM  
14 says "fails to consider other relevant 11:17:49AM  
15 information," by your own testimony he is 11:17:52AM  
16 correct, isn't he? Because you didn't 11:17:56AM  
17 consider the financial information from 11:17:59AM  
18 1996 through 2000 for Premier. 11:18:02AM  
19 A. I had not had that available. 11:18:09AM  
20 But had I had that available, it would 11:18:11AM  
21 have an influence on my conclusions, but 11:18:13AM  
22 not as significant an influence as the 11:18:18AM  
23 information that I did have, which told me 11:18:20AM  
24 what the prospects of the company were 11:18:24AM  
25 going forward and its growth trend and the 11:18:27AM

81

1 LIEBERMAN  
2 markets it was serving and the national 11:18:30AM  
3 economy and the industry economy, and all 11:18:33AM  
4 the much more important factors that we 11:18:36AM  
5 can use to look forward and say the value 11:18:39AM  
6 of this school is what it is going to 11:18:42AM  
7 produce, not what it did produce. 11:18:44AM  
8 So the more relevant data was 11:18:49AM  
9 looked at. The less relevant data, we did 11:18:52AM  
10 not have access to. 11:18:56AM  
11 Q. When you say you didn't have 11:18:59AM  
12 access to it, you weren't given it, 11:19:01AM  
13 correct? 11:19:03AM  
14 A. I was not given that data, nor 11:19:03AM  
15 did I have access to it. 11:19:06AM  
16 Q. Did you ask for that data? You 11:19:10AM  
17 don't recall? 11:19:12AM  
18 A. I don't recall. 11:19:13AM  
19 Q. Go on. 11:19:16AM  
20 (Witness perusing document.) 11:19:29AM  
21 A. The next paragraph, 11:19:29AM  
22 "Mr. Lieberman fails to recognize the 11:19:31AM  
23 effect that the change in revenue 11:19:32AM  
24 recognition policy had on the revenue and 11:19:34AM  
25 net income of PEG prior to December 31st, 11:19:36AM

21 (Pages 78 to 81)

82

1 LIEBERMAN  
2 2004, and as a result inaccurately uses 11:19:40AM  
3 unreasonable revenue and net income 11:19:47AM  
4 amounts in performing his analysis of the 11:19:49AM  
5 financial condition and in calculating the 11:19:52AM  
6 discounted cash flow." 11:19:55AM  
7 I object to that statement as 11:19:56AM  
8 being wrong, in that my cash flow analysis 11:20:00AM  
9 did not depend upon the revenue 11:20:06AM  
10 recognition policy. My cash flow analysis 11:20:10AM  
11 depended on when cash was received and in 11:20:12AM  
12 what amount. 11:20:17AM  
13 Q. As you've explained before, 11:20:18AM  
14 correct? 11:20:22AM  
15 A. As I explained before, the cash 11:20:22AM  
16 flow is the driver of my analysis, not the 11:20:24AM  
17 revenue recognition policy. 11:20:28AM  
18 Q. Go on. 11:20:30AM  
19 (Witness perusing document.) 11:20:37AM  
20 A. "Mr. Lieberman's entire 11:20:37AM  
21 financial analysis fails to consider 11:20:39AM  
22 appropriate financial results of PEG prior 11:20:42AM  
23 to 2005, including over \$20 million of 11:20:44AM  
24 adjustments." 11:20:51AM  
25 I object to that as well. It 11:20:52AM

83

1 LIEBERMAN  
2 did consider those results. 11:20:53AM  
3 Q. Okay, go on. 11:20:59AM  
4 (Witness perusing document.) 11:21:02AM  
5 A. "Additionally, the adjustment 11:21:02AM  
6 to add back to net income unauthorized 11:21:04AM  
7 payments to Mr. Yao of \$913,217 for nine 11:21:06AM  
8 months in 2002 and \$575,085 in 2003 lacks 11:21:08AM  
9 any supportable basis and overstates his 11:21:12AM  
10 calculation of cash flow." 11:21:15AM  
11 I do not agree with that 11:21:17AM  
12 statement. 11:21:19AM  
13 "Based upon our analysis, the 11:21:21AM  
14 documents identified in Mr. Lieberman's 11:21:24AM  
15 calculations of projected cash flow and 11:21:26AM  
16 resulting discounted cash flows for PEG 11:21:29AM  
17 are inaccurate, unreliable, unreasonable," 11:21:32AM  
18 and I do not agree and object to that 11:21:35AM  
19 statement. 11:21:38AM  
20 "As a result, his schedule of 11:21:39AM  
21 discounted cash flows is a series of 11:21:41AM  
22 mathematical calculations that cannot lead 11:21:44AM  
23 to a supportable or reasonable conclusion 11:21:45AM  
24 of value." I disagree with that. 11:21:47AM  
25 Q. So you believe that you have 11:21:51AM

84

1 LIEBERMAN  
2 presented a report which has a reasonable 11:21:54AM  
3 conclusion of value, correct? 11:21:58AM  
4 A. Correct. 11:21:59AM  
5 Q. Of Premier Education Group LLP? 11:22:02AM  
6 A. No. It is just LP. 11:22:08AM  
7 Q. LP, okay. 11:22:11AM  
8 I think we are through with 11:22:14AM  
9 Mr. Waddington. Now we can go on to 11:22:15AM  
10 Mr. Penny. I assume that you -- I better 11:22:20AM  
11 not assume. 11:22:24AM  
12 Have you formed opinions with 11:22:25AM  
13 respect to Mr. Penny's report? 11:22:26AM  
14 A. I have. 11:22:29AM  
15 Q. Do you disagree with some of 11:22:29AM  
16 the statements or all of the statements 11:22:33AM  
17 made by Mr. Penny in his report? 11:22:34AM  
18 A. I disagree with the methodology 11:22:39AM  
19 Mr. Penny used in his report, and I 11:22:42AM  
20 disagree with his comments on my report, 11:22:46AM  
21 and I disagree with his insertion of 11:22:49AM  
22 the -- using my report and my Schedule 7, 11:22:55AM  
23 he carried my analysis from 2001 through 11:23:01AM  
24 2005 using actual financial statements as 11:23:04AM  
25 projected and inserted 2006 actual, which 11:23:08AM

85

1 LIEBERMAN  
2 came out after I had done my report. 11:23:12AM  
3 He came to a conclusion that 11:23:15AM  
4 had I used the actual 2006 financial 11:23:17AM  
5 statements, my value would have been, I 11:23:21AM  
6 believe it was some \$11 million as opposed 11:23:24AM  
7 to the \$30 million which I had given an 11:23:27AM  
8 opinion on. 11:23:33AM  
9 Now, in his insertion of the 11:23:33AM  
10 actual 2006 financial cash flows, he 11:23:37AM  
11 surprisingly put in every number as stated 11:23:50AM  
12 on the financial statements except for the 11:23:51AM  
13 changes in working capital. For that 11:23:54AM  
14 number, he adopted my number, my 11:23:58AM  
15 guesstimate used in my report, versus 11:24:02AM  
16 every other number was right off the 2006 11:24:07AM  
17 statements, but he chose to selectively 11:24:10AM  
18 take that one number for changes in 11:24:12AM  
19 working capital and use the number that 11:24:14AM  
20 had appeared in my report as an estimate 11:24:17AM  
21 over the actual changes in working 11:24:19AM  
22 capital. 11:24:23AM  
23 So were one to substitute my 11:24:23AM  
24 number with the actual changes and be 11:24:25AM  
25 consistent with the rest of his column, 11:24:29AM

22 (Pages 82 to 85)



106

1 LIEBERMAN  
 2 MR. PAYERLE: Did we mark this 12:05:45PM  
 3 binder, by the way? 12:05:47PM  
 4 MR. EPSTEIN: No. Let's mark 12:05:49PM  
 5 the binder. 12:05:50PM  
 6 (Exhibit 2061-I marked for 12:06:04PM  
 7 identification.) 12:06:12PM  
 8 Q. Just as a refresher to you, 12:06:13PM  
 9 what I attempted to do in this binder is 12:06:15PM  
 10 put together your report, all documents 12:06:17PM  
 11 that I received from counsel which are 12:06:22PM  
 12 listed in your report as documents that 12:06:28PM  
 13 you either reviewed or relied on, plus I 12:06:30PM  
 14 put in the financials of Premier for 1997 12:06:33PM  
 15 through the year 2000. The '97 financial 12:06:41PM  
 16 statement has the '96 figures also. And 12:06:47PM  
 17 also the 2006 financial statements. 12:06:51PM  
 18 That should be what's in front 12:06:57PM  
 19 of you. 12:06:59PM  
 20 MR. PAYERLE: Are you done with 12:07:02PM  
 21 the identification of the exhibit? 12:07:02PM  
 22 MR. EPSTEIN: Yes. 12:07:04PM  
 23 MR. PAYERLE: If I can state 12:07:05PM  
 24 quickly, we object to the marking of the 12:07:06PM  
 25 exhibit to the extent that it does include 12:07:08PM

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1 LIEBERMAN  
 2 materials that Mr. Lieberman did not 12:07:11PM  
 3 produce or rely on, and to the extent that 12:07:13PM  
 4 by marking it together as one exhibit it 12:07:16PM  
 5 might be suggested or misunderstood 12:07:19PM  
 6 otherwise. 12:07:22PM  
 7 We also do understand, Counsel, 12:07:22PM  
 8 your description of what is in it. It is 12:07:24PM  
 9 obviously a lengthy exhibit. We have not 12:07:27PM  
 10 gone through to verify that everything is 12:07:29PM  
 11 as exactly stated. To the extent that 12:07:34PM  
 12 something comes up during the examination 12:07:37PM  
 13 of the exhibit, we can note it then. 12:07:39PM  
 14 MR. EPSTEIN: There is one page 12:07:42PM  
 15 I left out. That was an index which is 12:07:43PM  
 16 preceding the insert 1A which gives a 12:07:48PM  
 17 short description of each of the tabs. I 12:07:53PM  
 18 think that's the only thing I left out. 12:07:57PM  
 19 MR. PAYERLE: With reference to 12:08:01PM  
 20 that exhibit, I do note that it states 12:08:03PM  
 21 that tab 1A has the audited financial 12:08:06PM  
 22 statements of Premier Education Group LP 12:08:08PM  
 23 for the years 2001 to 2005. As you 12:08:11PM  
 24 indicated, it in fact goes back to 1996, I 12:08:15PM  
 25 believe. 12:08:18PM

108

1 LIEBERMAN  
 2 MR. EPSTEIN: That is an error, 12:08:19PM  
 3 and I appreciate you correcting me. Thank 12:08:20PM  
 4 you. 12:08:25PM  
 5 BY MR. EPSTEIN: 12:08:27PM  
 6 Q. Going to the letter that you 12:08:29PM  
 7 signed which went to Mr. Waters, you 12:08:31PM  
 8 referred to, in the third paragraph, IRS 12:08:35PM  
 9 Revenue Ruling 59-60. Can you tell me 12:08:39PM  
 10 what that ruling is? 12:08:44PM  
 11 A. That's a ruling that was 12:08:48PM  
 12 prepared in 1959, and that has all the 12:08:52PM  
 13 factors that come into play in preparing a 12:08:58PM  
 14 business valuation of closely-held stock. 12:09:05PM  
 15 It talks about the nature of the business, 12:09:11PM  
 16 the earnings capacity, the book value, 12:09:14PM  
 17 intangible value, you know, value of 12:09:21PM  
 18 intangible assets, dividend paying 12:09:24PM  
 19 capacity, sales of the company in its own 12:09:27PM  
 20 stock, and market comparables. 12:09:33PM  
 21 Q. Can you describe to me, if you 12:09:37PM  
 22 would, the importance of this revenue 12:09:38PM  
 23 ruling for people that practice your 12:09:44PM  
 24 profession, which is appraisers? 12:09:46PM  
 25 A. It is considered the seminal 12:09:50PM

109

1 LIEBERMAN  
 2 work on valuation methodology and is 12:09:51PM  
 3 referred to in all later documents that 12:09:59PM  
 4 purport to lay out the practices and 12:10:02PM  
 5 procedures in preparing a business 12:10:07PM  
 6 valuation. It is sort of like the Magna 12:10:10PM  
 7 Carta of business valuation. 12:10:13PM  
 8 Q. That is generally accepted by 12:10:20PM  
 9 all appraisers; is that correct? 12:10:21PM  
 10 A. That is generally accepted, 12:10:22PM  
 11 yes. 12:10:24PM  
 12 Q. By all appraisers who you would 12:10:24PM  
 13 give some credibility? 12:10:26PM  
 14 A. All accredited appraisers, yes. 12:10:28PM  
 15 Q. I want to go to your 12:10:37PM  
 16 definition, if you would, on page 2, with 12:10:40PM  
 17 the number 2 on it, the definition of 12:10:46PM  
 18 nonmarketable minority interest. 12:10:50PM  
 19 In the present case, you do not 12:11:00PM  
 20 use that level of value, correct, in your 12:11:03PM  
 21 valuation? 12:11:10PM  
 22 A. This report does not reflect a 12:11:10PM  
 23 value for nonmarketable minority interest. 12:11:12PM  
 24 Q. What do you mean when you say 12:11:21PM  
 25 "lacking both control and market 12:11:28PM

28 (Pages 106 to 109)

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1 LIEBERMAN  
 2 break? 12:55:36PM  
 3 MR. PAYERLE: Whenever it is 12:55:38PM  
 4 convenient for you. 12:55:40PM  
 5 Q. Revenue Ruling 59-60 also 12:55:52PM  
 6 strongly suggests, those are my words, but 12:55:57PM  
 7 interpreting the document, that you get 12:56:00PM  
 8 financial statements for a company and you 12:56:03PM  
 9 go back some two to five years; does it 12:56:05PM  
 10 not? 12:56:10PM  
 11 MR. PAYERLE: Objection to 12:56:10PM  
 12 form. 12:56:12PM  
 13 Q. In making a valuation, in 12:56:12PM  
 14 determining a fair value for the company, 12:56:17PM  
 15 doesn't it say that? 12:56:20PM  
 16 A. It doesn't refer to fair value, 12:56:21PM  
 17 it refers to fair market value, which is 12:56:24PM  
 18 very different than fair value. 12:56:27PM  
 19 It does have as one of the 12:56:34PM  
 20 components of preparing a valuation the 12:56:38PM  
 21 historical financial statements, which 12:56:41PM  
 22 would be the B in NEBIDISM. The B in 12:56:53PM  
 23 NEBIDISM stands for book value. Book 12:57:01PM  
 24 value would contemplate let's look at the 12:57:04PM  
 25 financial statements. 12:57:06PM

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1 LIEBERMAN  
 2 Q. Are you saying that the Revenue 12:57:09PM  
 3 Ruling 59-60 says to go back to the 12:57:23PM  
 4 financial statements for previous years 12:57:27PM  
 5 just to see what the book value of the 12:57:29PM  
 6 company was during those years? Is that 12:57:31PM  
 7 your testimony? 12:57:34PM  
 8 A. The book value reflects the 12:57:36PM  
 9 operations of the company. Yes. Maybe I 12:57:39PM  
 10 don't understand. 12:57:45PM  
 11 Q. So the only thing you would go 12:57:46PM  
 12 back and look at is the book value? 12:57:48PM  
 13 A. Well, you would look at the 12:57:51PM  
 14 operations of the company in prior years 12:57:53PM  
 15 clearly. 12:57:55PM  
 16 Q. Profit, loss, revenues? 12:57:56PM  
 17 A. Yes. But I think the essence 12:57:57PM  
 18 of it is that that's not the sole thing 12:57:59PM  
 19 that we are going to rely on to value a 12:58:07PM  
 20 company. That is one factor. But it 12:58:10PM  
 21 recognizes that more important is looking 12:58:15PM  
 22 forward. 12:58:17PM  
 23 I have to add that we've come a 12:58:18PM  
 24 long way since Revenue Ruling 59-60. 12:58:21PM  
 25 Revenue Ruling 59-60 started the process. 12:58:24PM

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1 LIEBERMAN  
 2 But since then there has been much 12:58:27PM  
 3 advancements in procedures and sources of 12:58:31PM  
 4 information to be used for valuing a 12:58:37PM  
 5 business. 12:58:39PM  
 6 I think the current thinking is 12:58:40PM  
 7 the most important aspect of valuing a 12:58:42PM  
 8 business is its prospective future cash 12:58:46PM  
 9 flow. 12:58:51PM  
 10 Q. Not its history? 12:58:51PM  
 11 A. Less important is its history. 12:58:53PM  
 12 Q. Wouldn't that depend upon the 12:58:55PM  
 13 company and depend upon the industry? 12:58:58PM  
 14 A. Absolutely. A company that is 12:59:00PM  
 15 not growing, yes, the history is it, the 12:59:01PM  
 16 history is pretty much going to tell us 12:59:06PM  
 17 what the future is going to be because 12:59:08PM  
 18 there is no anticipated changes. 12:59:10PM  
 19 For a company that is growing, 12:59:11PM  
 20 the history is of significantly less 12:59:13PM  
 21 importance. 12:59:17PM  
 22 Q. Most house builders over the 12:59:19PM  
 23 last seven or eight years were growing 12:59:22PM  
 24 pretty well, wouldn't you agree, during 12:59:26PM  
 25 that period? 12:59:29PM

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1 LIEBERMAN  
 2 A. From my understanding, they had 12:59:29PM  
 3 been growing very nicely. 12:59:31PM  
 4 Q. They are not growing so well 12:59:34PM  
 5 this year and the year before this; isn't 12:59:35PM  
 6 that true? 12:59:38PM  
 7 A. I would suggest that they are 12:59:39PM  
 8 shrinking as opposed to growing in terms 12:59:40PM  
 9 of sales. 12:59:43PM  
 10 Q. Are you suggesting that someone 12:59:47PM  
 11 two and a half, three years ago would be 12:59:48PM  
 12 able to project ahead as to what the 12:59:51PM  
 13 housing market was going to be in 2007? 12:59:54PM  
 14 A. There are projections that were 01:00:01PM  
 15 prepared back then that predicted a 01:00:03PM  
 16 housing collapse around this time. If 01:00:06PM  
 17 someone were to study the industry 01:00:10PM  
 18 literature, they would perhaps come to 01:00:12PM  
 19 that conclusion, perhaps not. 01:00:15PM  
 20 Q. Have you looked at that 01:00:17PM  
 21 literature? 01:00:18PM  
 22 A. In fact, I actually have, 01:00:19PM  
 23 because I'm working on a valuation for a 01:00:21PM  
 24 builder of homes. 01:00:25PM  
 25 Q. Tell me what report you are 01:00:25PM

37 (Pages 142 to 145)

<p style="text-align: right;">150</p> <p>1 LIEBERMAN</p> <p>2 Premier, the fact that their profits and 01:49:36PM</p> <p>3 pretax income as a percentage of sales was 01:49:41PM</p> <p>4 substantially higher than these benchmark 01:49:47PM</p> <p>5 companies that you are referring to? 01:49:50PM</p> <p>6 A. I'm not sure what you mean by 01:49:54PM</p> <p>7 "red flag." 01:49:55PM</p> <p>8 Q. Would a prospective purchaser 01:49:58PM</p> <p>9 want to investigate as to why that was so? 01:50:02PM</p> <p>10 A. A prospective purchaser would 01:50:04PM</p> <p>11 certainly want to investigate why that was 01:50:06PM</p> <p>12 so. 01:50:08PM</p> <p>13 Q. Would a prospective purchaser 01:50:09PM</p> <p>14 also want to know the basis for the 80/20 01:50:12PM</p> <p>15 percent reporting of revenue? 01:50:17PM</p> <p>16 A. Do you mean the revenue 01:50:22PM</p> <p>17 recognition policy that we discussed 01:50:24PM</p> <p>18 earlier? 01:50:26PM</p> <p>19 Q. Yes. 01:50:26PM</p> <p>20 A. They would want to -- I'm not 01:50:29PM</p> <p>21 sure of the question. "The basis"? I 01:50:31PM</p> <p>22 don't know what you mean. 01:50:34PM</p> <p>23 Q. You are not sure of the 01:50:35PM</p> <p>24 question? 01:50:37PM</p> <p>25 A. No. 01:50:37PM</p>	<p style="text-align: right;">152</p> <p>1 LIEBERMAN</p> <p>2 and the fact that they were recognizing 01:51:29PM</p> <p>3 revenues on an 80/20 percent split? 01:51:33PM</p> <p>4 A. A buyer, hypothetical buyer, 01:51:38PM</p> <p>5 would look at all data that a company is 01:51:43PM</p> <p>6 presenting and would look at all 01:51:47PM</p> <p>7 relationships between balance sheet and 01:51:49PM</p> <p>8 income statement items and derive his own 01:51:53PM</p> <p>9 conclusions as to what will the cash flows 01:51:57PM</p> <p>10 from the company be. 01:51:58PM</p> <p>11 Q. So is your answer yes to my 01:52:01PM</p> <p>12 question? 01:52:04PM</p> <p>13 A. My answer is what the answer 01:52:04PM</p> <p>14 is. 01:52:06PM</p> <p>15 Q. Is your answer yes, or do you 01:52:07PM</p> <p>16 refuse to answer that question? Is your 01:52:10PM</p> <p>17 answer yes? 01:52:12PM</p> <p>18 MR. PAYERLE: Objection to 01:52:13PM</p> <p>19 form. 01:52:14PM</p> <p>20 A. I don't even remember what the 01:52:14PM</p> <p>21 question is anymore. 01:52:15PM</p> <p>22 Q. That's because your answer went 01:52:16PM</p> <p>23 on in a rambling manner totally 01:52:18PM</p> <p>24 unresponsive to what I asked you. 01:52:21PM</p> <p>25 MR. PAYERLE: I had an 01:52:23PM</p>
<p style="text-align: right;">151</p> <p>1 LIEBERMAN</p> <p>2 Q. You can't understand my 01:50:37PM</p> <p>3 question? 01:50:38PM</p> <p>4 A. No. 01:50:39PM</p> <p>5 Q. I will go on to the next 01:50:39PM</p> <p>6 question. 01:50:41PM</p> <p>7 A. Okay. 01:50:41PM</p> <p>8 Q. Do you think there is any 01:50:41PM</p> <p>9 relationship between -- do you think that 01:50:45PM</p> <p>10 a prospective purchaser would see a 01:50:48PM</p> <p>11 relationship between this last sentence 01:50:51PM</p> <p>12 that I read to you and the fact that the 01:50:54PM</p> <p>13 company was reporting as revenues 80 01:50:57PM</p> <p>14 percent of the contracts that were signed 01:51:03PM</p> <p>15 during a particular year? 01:51:05PM</p> <p>16 A. I can't put myself in the shoes 01:51:06PM</p> <p>17 of a particular purchaser. That's what 01:51:10PM</p> <p>18 you are asking me to do. 01:51:13PM</p> <p>19 Q. No, not particular. A ready, 01:51:14PM</p> <p>20 willing, able buyer with reasonable 01:51:18PM</p> <p>21 knowledge of what he was negotiating to 01:51:20PM</p> <p>22 buy under the definition of fair market 01:51:23PM</p> <p>23 value. 01:51:25PM</p> <p>24 Would that person sort of draw 01:51:25PM</p> <p>25 a relationship between your sentence here 01:51:27PM</p>	<p style="text-align: right;">153</p> <p>1 LIEBERMAN</p> <p>2 objection to form previously to the 01:52:24PM</p> <p>3 question and another objection to the 01:52:27PM</p> <p>4 commentary by Counsel. 01:52:29PM</p> <p>5 Q. I will ask it again. 01:52:34PM</p> <p>6 Do you think a willing 01:52:36PM</p> <p>7 purchaser or a ready, willing and able 01:52:40PM</p> <p>8 prospective purchaser of Premier would 01:52:45PM</p> <p>9 take a look at the facts which underlie 01:52:46PM</p> <p>10 the last sentence that I read to you in 01:52:53PM</p> <p>11 your report and tie those facts in with 01:52:56PM</p> <p>12 the 80/20 percent recognition? 01:52:59PM</p> <p>13 A. A ready, willing and able 01:53:05PM</p> <p>14 purchaser would look at all factors 01:53:07PM</p> <p>15 associated with the financial data that he 01:53:09PM</p> <p>16 is presented with and draw conclusions 01:53:11PM</p> <p>17 from the relationships within that 01:53:13PM</p> <p>18 financial data. 01:53:16PM</p> <p>19 Q. So would the answer to my 01:53:17PM</p> <p>20 question be yes? 01:53:19PM</p> <p>21 A. I gave you my answer. 01:53:20PM</p> <p>22 Q. I'm asking you another 01:53:22PM</p> <p>23 question. Would the answer to my question 01:53:24PM</p> <p>24 be yes? 01:53:26PM</p> <p>25 MR. PAYERLE: Objection, form. 01:53:28PM</p>

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<p style="text-align: right;">158</p> <p>1 LIEBERMAN</p> <p>2 restatement that was made; is that 02:01:20PM</p> <p>3 correct? 02:01:22PM</p> <p>4 A. Well, apparently there is two 02:01:24PM</p> <p>5 note 14's, and I read the first note 14 02:01:26PM</p> <p>6 that appears on the page. You must be 02:01:29PM</p> <p>7 referring to the second note 14. 02:01:32PM</p> <p>8 Q. Correct, I am. 02:01:34PM</p> <p>9 A. I did not read the second note 02:01:35PM</p> <p>10 14 as of yet. 02:01:38PM</p> <p>11 Q. Why don't you read it. 02:01:39PM</p> <p>12 A. I will. 02:01:40PM</p> <p>13 (Witness perusing document.) 02:01:44PM</p> <p>14 MR. PAYERLE: To be clear, we 02:01:44PM</p> <p>15 are now referring to the note 14 captioned 02:01:45PM</p> <p>16 "Restatement"? 02:01:47PM</p> <p>17 MR. EPSTEIN: Yes. 02:01:53PM</p> <p>18 Q. Have you read that now? 02:02:22PM</p> <p>19 A. Yes, I have. 02:02:23PM</p> <p>20 Q. I go back, again, to your 02:02:24PM</p> <p>21 statement in your text of your report at 02:02:26PM</p> <p>22 page 11, "an unexplained and unaccounted 02:02:29PM</p> <p>23 for difference in retained earnings." 02:02:33PM</p> <p>24 Do you think that this note 14 02:02:36PM</p> <p>25 does not explain the difference? 02:02:39PM</p>	<p style="text-align: right;">160</p> <p>1 LIEBERMAN</p> <p>2 conform to, it does not conform to APB 20, 02:03:47PM</p> <p>3 which is a part, at this time, of 02:03:51PM</p> <p>4 generally accepted accounting principles. 02:03:54PM</p> <p>5 It has since changed. 02:03:56PM</p> <p>6 Q. So when you read this, you were 02:03:57PM</p> <p>7 confused, you didn't know what this meant? 02:03:59PM</p> <p>8 You as an accountant, CPA, didn't know 02:04:01PM</p> <p>9 what this meant? 02:04:04PM</p> <p>10 MR. PAYERLE: Objection to 02:04:05PM</p> <p>11 form. 02:04:07PM</p> <p>12 A. I read this and couldn't track 02:04:07PM</p> <p>13 the change to identify in particular what 02:04:09PM</p> <p>14 years it affected and how I would 02:04:15PM</p> <p>15 implement this change into my analysis. 02:04:19PM</p> <p>16 Moreover, since I was doing a 02:04:21PM</p> <p>17 cash flow analysis, this change became I 02:04:24PM</p> <p>18 wouldn't say irrelevant, but less 02:04:28PM</p> <p>19 important, because my cash flows were not 02:04:31PM</p> <p>20 dependent upon this change. My cash flows 02:04:33PM</p> <p>21 were dependent upon what cash came in. 02:04:37PM</p> <p>22 Q. I don't see the statement in 02:04:39PM</p> <p>23 here, "an unexplained and unaccounted and 02:04:40PM</p> <p>24 irrelevant difference." You just say "an 02:04:43PM</p> <p>25 unexplained and unaccounted for 02:04:46PM</p>
<p style="text-align: right;">159</p> <p>1 LIEBERMAN</p> <p>2 A. I think this note 14 does not 02:02:42PM</p> <p>3 properly explain the difference. 02:02:45PM</p> <p>4 Q. Is the word "properly" in your 02:02:47PM</p> <p>5 report? 02:02:52PM</p> <p>6 A. No. 02:02:53PM</p> <p>7 Q. It says an "unexplained and 02:02:53PM</p> <p>8 unaccounted for"? 02:02:56PM</p> <p>9 A. The inference is not properly 02:02:57PM</p> <p>10 explained or accounted for. 02:03:01PM</p> <p>11 Q. So you draw inferences from 02:03:02PM</p> <p>12 your own writing, is that what you are 02:03:03PM</p> <p>13 telling me? Let's move on. 02:03:05PM</p> <p>14 This does explain why the 02:03:08PM</p> <p>15 restatement was made, correct? 02:03:12PM</p> <p>16 A. According to APB 20, this does 02:03:16PM</p> <p>17 not explain the accounting change that is 02:03:20PM</p> <p>18 improperly accounted for in these 02:03:27PM</p> <p>19 financial statements. 02:03:28PM</p> <p>20 Q. So this is not an explanation? 02:03:29PM</p> <p>21 A. It is not a correct 02:03:33PM</p> <p>22 explanation, no. It does not cover the 02:03:34PM</p> <p>23 criteria that APB 20, to be in generally 02:03:37PM</p> <p>24 accepted accounting principles, which 02:03:44PM</p> <p>25 oddly they say they are doing it to 02:03:46PM</p>	<p style="text-align: right;">161</p> <p>1 LIEBERMAN</p> <p>2 difference." 02:04:48PM</p> <p>3 Are you telling me that you 02:04:49PM</p> <p>4 didn't understand when you read this 02:04:51PM</p> <p>5 second note 14, the bottom note, the one 02:04:54PM</p> <p>6 that says "Restatement," you didn't 02:04:56PM</p> <p>7 understand what the accountant who 02:04:58PM</p> <p>8 prepared this was communicating to you? 02:05:00PM</p> <p>9 Are you saying that to me? 02:05:02PM</p> <p>10 A. I'm saying that his explanation 02:05:04PM</p> <p>11 did not lead me down the path to be able 02:05:08PM</p> <p>12 to implement that change in the annual 02:05:10PM</p> <p>13 financial statements that were presented 02:05:14PM</p> <p>14 to me. 02:05:15PM</p> <p>15 Q. So you weren't able to do it. 02:05:17PM</p> <p>16 Did you see that Mr. Waddington 02:05:19PM</p> <p>17 did it? 02:05:21PM</p> <p>18 A. I saw that Mr. Waddington did 02:05:22PM</p> <p>19 it, based on, he says, on the work papers 02:05:25PM</p> <p>20 that were provided to him of the prior 02:05:27PM</p> <p>21 accountant. 02:05:30PM</p> <p>22 Q. Did you ask to see the work 02:05:30PM</p> <p>23 papers of -- when you looked at this and 02:05:32PM</p> <p>24 felt confused and didn't know the basis, 02:05:34PM</p> <p>25 did you make any inquiry for any 02:05:38PM</p>

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1 LIEBERMAN  
2 additional information? 02:05:39PM  
3 A. I made an inquiry for 02:05:40PM  
4 additional information. 02:05:42PM  
5 Q. You did? 02:05:42PM  
6 A. Yes, I did. 02:05:43PM  
7 Q. Who did you make it of? 02:05:43PM  
8 A. Lois Goodman. 02:05:45PM  
9 Q. Did she tell you that in fact 02:05:46PM  
10 these Halterman documents had all been 02:05:48PM  
11 produced and that the work papers were 02:05:52PM  
12 available? 02:05:54PM  
13 A. I'm not aware of that. 02:05:54PM  
14 Q. Well, what did she tell you? 02:05:56PM  
15 A. My recollection is that we were 02:05:58PM  
16 not -- we didn't have access to those 02:06:00PM  
17 documents. Or if we did have access, they 02:06:04PM  
18 weren't findable. I asked for the 02:06:07PM  
19 accountant's work papers and was told I 02:06:09PM  
20 was not getting the accountant's work 02:06:11PM  
21 papers. That was the first thing we asked 02:06:14PM  
22 for. 02:06:17PM  
23 Q. You would have liked to have 02:06:18PM  
24 seen those? 02:06:20PM  
25 A. Yes, I would have. 02:06:21PM

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1 LIEBERMAN  
2 Q. I don't mean to represent that 02:06:28PM  
3 Halterman was deposed -- I don't know the 02:06:30PM  
4 day that he was deposed and I don't know 02:06:32PM  
5 how it fits in with the May 7th date. But 02:06:35PM  
6 when did you start working on this? You 02:06:40PM  
7 said February was the first contact. 02:06:43PM  
8 A. I think it was February. It 02:06:46PM  
9 could have been March. I'm not sure. 02:06:55PM  
10 Q. But, at any rate, at some point 02:06:56PM  
11 you said to Ms. Goodman "I would really 02:06:59PM  
12 like to see the work papers"? 02:07:02PM  
13 A. I did make that request. 02:07:03PM  
14 Q. And she responded to you they 02:07:05PM  
15 are not available, correct? 02:07:07PM  
16 A. She did not produce them. I 02:07:10PM  
17 don't remember her exact response. 02:07:12PM  
18 Q. I will represent to you that at 02:07:20PM  
19 some point they were produced, in other 02:07:22PM  
20 words, they were made available to all 02:07:25PM  
21 counsel, all counsel had them. I will 02:07:28PM  
22 make that representation. 02:07:30PM  
23 At no time did you ever get a 02:07:32PM  
24 call from Ms. Goodman or anyone else at 02:07:34PM  
25 McElroy, "Hey, we have those work papers 02:07:37PM

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1 LIEBERMAN  
2 that you wanted to look at"? 02:07:39PM  
3 A. I did not get a call that the 02:07:42PM  
4 work papers were available. 02:07:44PM  
5 Q. Even though you didn't 02:07:59PM  
6 understand this adjustment, for purposes 02:08:00PM  
7 of your calculations for subsequent years, 02:08:03PM  
8 you did incorporate the change that was 02:08:06PM  
9 made; isn't that correct? 02:08:10PM  
10 A. I incorporated the change that 02:08:16PM  
11 was made in my cash flow analysis. 02:08:18PM  
12 Q. What caused you to accept that 02:08:23PM  
13 change if you felt that you had not been 02:08:27PM  
14 provided sufficient information to 02:08:30PM  
15 determine why the change was made? 02:08:33PM  
16 A. It had nothing to do with 02:08:35PM  
17 accepting the change. I had to account 02:08:37PM  
18 for the change because the financial 02:08:38PM  
19 statements changed. 02:08:41PM  
20 So when I went from one period 02:08:42PM  
21 to another, there was a different 02:08:43PM  
22 financial statement, so I had to account 02:08:46PM  
23 for this change, and I accounted for it by 02:08:47PM  
24 eliminating it to get to my cash flow 02:08:51PM  
25 number. 02:08:53PM

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1 LIEBERMAN  
2 Q. I understand that. 02:08:53PM  
3 Had you been given the work 02:08:55PM  
4 papers that you had requested and which 02:08:57PM  
5 apparently Mr. Waddington was given, would 02:09:00PM  
6 you have gone back the same way that 02:09:03PM  
7 Mr. Waddington did and recalculate the 02:09:08PM  
8 revenues and the profits for each of the 02:09:12PM  
9 preceding years? By "preceding," I mean 02:09:14PM  
10 preceding this restatement. 02:09:17PM  
11 MR. PAYERLE: Objection to 02:09:19PM  
12 form. 02:09:20PM  
13 A. It would not have changed my 02:09:20PM  
14 cash flow analysis. 02:09:22PM  
15 Q. So you would not have done what 02:09:24PM  
16 I just said? You would not have gone back 02:09:25PM  
17 and recalculated income -- excuse me, 02:09:29PM  
18 revenues and profits for the preceding 02:09:34PM  
19 years? 02:09:37PM  
20 MR. PAYERLE: Same objection. 02:09:37PM  
21 A. I would not have changed my 02:09:39PM  
22 cash flow analysis. It would have changed 02:09:41PM  
23 my narrative to some degree obviously 02:09:44PM  
24 because I would have different amounts in 02:09:47PM  
25 my comparison to the RMA data. 02:09:50PM

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1 LIEBERMAN  
 2 experience is. Why don't you tell me what 03:40:12PM  
 3 that is. 03:40:14PM  
 4 A. As a business valuator, I 03:40:15PM  
 5 valued a language school in Manhattan. 03:40:17PM  
 6 Well, it is Manhattan, Queens, Vancouver, 03:40:21PM  
 7 Miami, and New Jersey. I did a valuation 03:40:27PM  
 8 of the school. 03:40:31PM  
 9 Q. For what purpose was that 03:40:33PM  
 10 valuation? 03:40:36PM  
 11 A. Strategic planning. 03:40:36PM  
 12 Q. Tell me what that means. 03:40:39PM  
 13 A. Planning the future of the 03:40:42PM  
 14 company, to make decisions based on what 03:40:47PM  
 15 the value is today, or identify value 03:40:50PM  
 16 drivers in the company and make an effort 03:40:53PM  
 17 to improve value through utilizing 03:40:57PM  
 18 techniques to increase the value drivers 03:41:02PM  
 19 so that the company is worth more tomorrow 03:41:05PM  
 20 than it is today. 03:41:07PM  
 21 Q. Am I correct, then, that to the 03:41:09PM  
 22 extent the company had components, you put 03:41:11PM  
 23 a fair market value on each of the 03:41:14PM  
 24 components; is that what you did? 03:41:16PM  
 25 A. I put a fair market value on 03:41:18PM

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1 LIEBERMAN  
 2 the company as a whole. 03:41:20PM  
 3 Q. But in doing that, I understood 03:41:22PM  
 4 you to say that you put values on the 03:41:26PM  
 5 components to see what was profitable and 03:41:28PM  
 6 not; or am I misreading what you said? 03:41:31PM  
 7 A. I believe you are misreading 03:41:34PM  
 8 that, because I didn't say anything of the 03:41:36PM  
 9 kind. 03:41:38PM  
 10 Q. You just went in and gave an 03:41:38PM  
 11 overall value of the company for strategic 03:41:41PM  
 12 planning? 03:41:44PM  
 13 A. I gave a value of the company 03:41:44PM  
 14 for strategic planning, yes. 03:41:47PM  
 15 Q. What was the standard you used, 03:41:49PM  
 16 a willing buyer and willing purchaser? 03:41:52PM  
 17 A. I used fair market value, yes. 03:41:53PM  
 18 Q. Was there any buyer involved or 03:42:05PM  
 19 was this just internal? In other words, 03:42:08PM  
 20 was it for the purpose of determining 03:42:10PM  
 21 whether an offer for the company was fair 03:42:13PM  
 22 and reasonable or anything like that? 03:42:16PM  
 23 A. One of the strategic plans, 03:42:18PM  
 24 which is the purpose of the valuation, was 03:42:21PM  
 25 to bring in outside investors. That was 03:42:23PM

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1 LIEBERMAN  
 2 part of the strategic planning process. 03:42:26PM  
 3 So to bring in outside investors, a value 03:42:29PM  
 4 for the company overall needed to be 03:42:34PM  
 5 established to attract investors. 03:42:38PM  
 6 Q. Were you successful in 03:42:43PM  
 7 attracting investors? 03:42:45PM  
 8 A. The plan was actually 03:42:46PM  
 9 abandoned. 03:42:49PM  
 10 Q. Did you do a report? 03:42:49PM  
 11 A. Yes, I did. 03:42:51PM  
 12 Q. Was it abandoned because you 03:42:54PM  
 13 put a higher value on it than what the 03:42:57PM  
 14 owners of the company thought the company 03:42:59PM  
 15 was worth? 03:43:00PM  
 16 A. No, it was abandoned because 03:43:02PM  
 17 the owner was too egotistical to allow 03:43:04PM  
 18 anybody to come in and work even on a 03:43:08PM  
 19 minority basis in his company. 03:43:11PM  
 20 Q. So you did that valuation and 03:43:30PM  
 21 that was in a language school setting, all 03:43:34PM  
 22 within the metropolitan New York area? 03:43:38PM  
 23 A. National. 03:43:41PM  
 24 Q. Oh, national. And when was 03:43:44PM  
 25 that done? 03:43:47PM

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1 LIEBERMAN  
 2 A. 2000. 03:43:48PM  
 3 Q. Do you have a copy of that 03:43:49PM  
 4 report in your files? 03:43:51PM  
 5 A. Yes, I do. I have a 03:43:51PM  
 6 non-letterhead copy. It is just a Word 03:43:57PM  
 7 file. Because I was with a different firm 03:44:00PM  
 8 at the time. 03:44:03PM  
 9 Q. In that situation, did you make 03:44:05PM  
 10 projections of revenues? 03:44:08PM  
 11 A. Yes, we did. 03:44:10PM  
 12 Q. You didn't use actual, you made 03:44:10PM  
 13 projections? 03:44:13PM  
 14 A. We did projections based on 03:44:13PM  
 15 management's best estimate of the future 03:44:18PM  
 16 of the company. 03:44:21PM  
 17 Q. What kind of projections did 03:44:27PM  
 18 they give you? Did they give you a pretty 03:44:29PM  
 19 comprehensive set of directions, 03:44:32PM  
 20 documents, in which they really set forth 03:44:36PM  
 21 the analytical process by which they made 03:44:38PM  
 22 these projections? Or was it just an 03:44:41PM  
 23 oral, "We expect to bring in \$24 million 03:44:46PM  
 24 next year"? Do you recall? 03:44:49PM  
 25 MR. PAYERLE: Objection to 03:44:52PM

61 (Pages 238 to 241)

318

1 LIEBERMAN  
2 Q. But you are not going to go 05:30:24PM  
3 into court and say the value of Premier on 05:30:26PM  
4 March 31, 2002 was \$77,550,000, or are 05:30:30PM  
5 you? 05:30:36PM  
6 A. Were Gary Camp to go in and say 05:30:39PM  
7 what's the value of your company, he 05:30:41PM  
8 theoretically would say it is worth \$77 05:30:44PM  
9 million on March of '02 and \$172 million 05:30:46PM  
10 on December of '06. 05:30:50PM  
11 I'm presenting this as a 05:30:55PM  
12 possible range of the value. But I'm 05:30:56PM  
13 conservative. Taking a conservative 05:30:58PM  
14 stance on this company, I valued it at the 05:31:00PM  
15 \$30 million and the \$59 million. 05:31:04PM  
16 Q. Again, you are not going to get 05:31:09PM  
17 on the stand, you, not Gary Camp, not me, 05:31:12PM  
18 not your attorney, you, you are the 05:31:16PM  
19 expert, are you going to get on the stand 05:31:21PM  
20 and say Premier, on March 31, 2002, was 05:31:23PM  
21 worth \$77,550,000; are you going to say 05:31:27PM  
22 that? 05:31:32PM  
23 A. My conclusion of value is \$30 05:31:32PM  
24 million. 05:31:33PM  
25 Q. So you will not say 77, 05:31:33PM

319

1 LIEBERMAN  
2 correct? 05:31:35PM  
3 A. 77 is a different number than 05:31:36PM  
4 30. 05:31:39PM  
5 Q. So you will not say it? 05:31:39PM  
6 A. I will not say that as my 05:31:41PM  
7 conclusion of value. 05:31:43PM  
8 Q. You will also not say that your 05:31:44PM  
9 conclusion of value on December 31, 2006 05:31:46PM  
10 is \$172,290,000, will you? 05:31:49PM  
11 A. My conclusion of value on 05:31:54PM  
12 December 31, 2006 is \$59,795,000. 05:31:56PM  
13 Q. Let me ask you, were you told 05:32:04PM  
14 why you were being asked to value Premier 05:32:07PM  
15 as an entity? 05:32:12PM  
16 A. In a litigation associated with 05:32:21PM  
17 a bankruptcy. 05:32:23PM  
18 Q. Is that all you were told? 05:32:25PM  
19 A. Yes. 05:32:27PM  
20 Q. Generally when you are asked to 05:32:28PM  
21 do an appraisal, do you ask a question 05:32:30PM  
22 such as "For what purpose?" 05:32:32PM  
23 A. Yes. 05:32:35PM  
24 Q. If you are told it is for a 05:32:37PM  
25 litigation, that's sufficient? 05:32:39PM

320

1 LIEBERMAN  
2 A. Well, yes, it is a litigation 05:32:45PM  
3 in association with a potential fraudulent 05:32:51PM  
4 conveyance, I believe. But that's not my 05:32:54PM  
5 expert opinion. That's just what I 05:32:56PM  
6 believe. I was told it was for a 05:32:58PM  
7 litigation. 05:32:59PM  
8 Q. Did you ask Mr. Waters, who you 05:33:00PM  
9 believed was the trustee, as to why he 05:33:02PM  
10 wanted this information? 05:33:04PM  
11 MR. PAYERLE: Objection, form. 05:33:05PM  
12 A. Yes, and he said it is a 05:33:10PM  
13 litigation associated with a bankruptcy. 05:33:13PM  
14 Q. Did you ask him specifically 05:33:14PM  
15 why he wanted it? 05:33:16PM  
16 A. Yes. He said for a litigation 05:33:19PM  
17 associated with a bankruptcy. 05:33:21PM  
18 Q. No other details? 05:33:22PM  
19 A. Again, because of a possible 05:33:25PM  
20 fraudulent conveyance was my impression. 05:33:28PM  
21 I can't say that I recall him saying that. 05:33:30PM  
22 Q. Fraudulent conveyance of what? 05:33:32PM  
23 A. I'm speaking without knowledge. 05:33:35PM  
24 My impression. 05:33:41PM  
25 Q. Fraudulent conveyance of 05:33:41PM

321

1 LIEBERMAN  
2 Premier Education Group LP, was that your 05:33:43PM  
3 understanding? 05:33:51PM  
4 A. Actually, it is of a general 05:33:51PM  
5 partnership, GP of Premier Education 05:33:56PM  
6 Group, Inc. 05:34:01PM  
7 Q. That you were told was 05:34:02PM  
8 fraudulently transferred, the general 05:34:06PM  
9 partnership interest? 05:34:08PM  
10 A. I wasn't told it was 05:34:08PM  
11 fraudulently transferred. I figured that 05:34:12PM  
12 out all by myself. 05:34:19PM  
13 Q. From what? 05:34:21PM  
14 A. I don't recall. 05:34:23PM  
15 Q. Did you ever ask Mr. Waters or 05:34:26PM  
16 any of the attorneys at McElroy, or the 05:34:28PM  
17 Trustee for that matter, "Why am I not 05:34:34PM  
18 being asked to value the property that was 05:34:36PM  
19 actually transferred, the general 05:34:38PM  
20 partnership interest?" 05:34:41PM  
21 A. Actually, I did. I was told 05:34:41PM  
22 that "We don't know what the percentage 05:34:43PM  
23 interest of the general partner was. We 05:34:46PM  
24 have conflicting documents that have 05:34:49PM  
25 different percentages." And, in fact, 05:34:51PM

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322

1 LIEBERMAN  
2 those were presented to me. 05:34:54PM  
3 Q. Tell me what was presented to 05:34:57PM  
4 you which had conflicting information, 05:35:02PM  
5 because I don't think they are listed 05:35:03PM  
6 either. 05:35:05PM  
7 A. I didn't use it in my report. 05:35:05PM  
8 Q. So you were aware at the time 05:35:07PM  
9 of your report that what was transferred 05:35:08PM  
10 was a general partnership interest, and 05:35:12PM  
11 you were told the reason why you weren't 05:35:14PM  
12 valuing the general partnership interest 05:35:16PM  
13 is because there was conflicting 05:35:17PM  
14 information as to what interest the 05:35:23PM  
15 general partner had in the limited 05:35:24PM  
16 partnership; is that correct? 05:35:26PM  
17 A. I was asked to do a 100 percent 05:35:27PM  
18 interest in the limited partnership, and 05:35:30PM  
19 that's what I did. 05:35:34PM  
20 Q. But you were told the reason 05:35:37PM  
21 why you shouldn't do an appraisal of the 05:35:39PM  
22 general partnership interest is because 05:35:42PM  
23 there was -- isn't that what you testified 05:35:44PM  
24 to? 05:35:47PM  
25 A. Yes, it was unknown as to what 05:35:48PM

323

1 LIEBERMAN  
2 the general partnership interest was. 05:35:49PM  
3 Q. And you were given documents to 05:35:51PM  
4 show what was this conflict? 05:35:53PM  
5 MR. PAYERLE: Objection. 05:35:55PM  
6 A. Yes. 05:35:56PM  
7 Q. And what were those documents? 05:35:56PM  
8 A. I don't recall. 05:35:57PM  
9 Q. Do you still have those 05:35:58PM  
10 documents? 05:35:59PM  
11 A. Yes, I do. 05:35:59PM  
12 MR. EPSTEIN: I call for the 05:36:02PM  
13 production of those documents also. 05:36:03PM  
14 MR. PAYERLE: We will consider 05:36:06PM  
15 it. 05:36:07PM  
16 Q. Anything else you looked at 05:36:07PM  
17 that you haven't -- at the time you 05:36:08PM  
18 prepared this report that you haven't 05:36:12PM  
19 disclosed to me today? 05:36:14PM  
20 A. It is very possible. I looked 05:36:16PM  
21 at a lot of things. 05:36:19PM  
22 Q. You see, you don't understand. 05:36:20PM  
23 It is not supposed to be very possible. 05:36:22PM  
24 You are supposed to tell me every document 05:36:24PM  
25 that you reviewed or relied upon in 05:36:26PM

324

1 LIEBERMAN  
2 preparing a report. 05:36:28PM  
3 A. Every document I reviewed and 05:36:30PM  
4 relied upon is in this report or I have 05:36:32PM  
5 disclosed to you today. There may be 05:36:35PM  
6 other documents that I looked at that I 05:36:37PM  
7 did not use or rely upon in this report, 05:36:39PM  
8 such as -- 05:36:42PM  
9 Q. You see, you changed "reviewed" 05:36:43PM  
10 to "used." Sometimes a document will be 05:36:45PM  
11 contrary to your position and you look at 05:36:48PM  
12 it. You don't use it. But you are 05:36:51PM  
13 obligated to disclose it. 05:36:54PM  
14 Do you understand that as an 05:36:55PM  
15 expert, that you are obligated to disclose 05:36:56PM  
16 that? 05:36:58PM  
17 MR. PAYERLE: Objection, form. 05:36:58PM  
18 Q. Or you don't understand that? 05:37:00PM  
19 MR. PAYERLE: Objection to 05:37:02PM  
20 form. 05:37:02PM  
21 Q. You don't know the answer to 05:37:02PM  
22 that? 05:37:04PM  
23 A. Every document that I used or 05:37:04PM  
24 reviewed has been disclosed in this report 05:37:06PM  
25 or to you. 05:37:09PM

325

1 LIEBERMAN  
2 Q. That's all I wanted to hear. 05:37:12PM  
3 So there are no other documents? 05:37:14PM  
4 A. No. 05:37:16PM  
5 Q. You gave testimony in two 05:37:24PM  
6 cases, correct? 05:37:26PM  
7 A. Within the last three years. 05:37:27PM  
8 Q. Tell me what testimony you gave 05:37:30PM  
9 in the two cases. And that will be my 05:37:31PM  
10 swan song for today. 05:37:36PM  
11 A. I have to refresh myself as to 05:37:37PM  
12 what those two cases were. 05:37:40PM  
13 Q. Tell me the testimony that you 05:38:39PM  
14 gave. 05:38:41PM  
15 A. Well, in Andre Assous versus 05:38:42PM  
16 Ellen Zoldessy, I did a calculation and a 05:38:46PM  
17 valuation of a contract between Andre 05:38:54PM  
18 Assous, Inc. and the Andy Warhol 05:39:00PM  
19 Foundation. 05:39:07PM  
20 Q. Was that a breach of contract 05:39:07PM  
21 case? 05:39:08PM  
22 A. It was a case where Ellen 05:39:09PM  
23 Zoldessy purportedly ruined the deal, so 05:39:12PM  
24 to speak, for Andre Assous and the Andy 05:39:17PM  
25 Warhol Foundation and tried to establish 05:39:22PM

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